

GLR/byk

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SHIRLEY MURPHY,

Plaintiff,

v.

Civil No. 05-2229-CM/GLR

EDWARD S. CARROLL, M.D.,
and KEARNEY HEART AND LUNG
SURGEONS, P.C.,

Defendants.

ORDER

This matter is before the Court on the Motion to Amend Initial Order Regarding Planning and Scheduling filed by defendants Edward S. Carroll, D.O., and Kearney Heart and Lung Surgeons, P.C. (referred jointly as “Defendants”). Defendants state in their motion that “[a] fair reading of plaintiff’s response is that she does not contend that this Court has jurisdiction and should continue management of this case, rather she contends that the case should be transferred to the United States District Court of the District of Nebraska for further management and ultimate disposition.” Under these circumstances, Defendants request that the Court wait to conduct the Scheduling Conference and stay parties’ planning conference and report deadlines until the District Judge rules on the pending Motion to Dismiss and the issue of jurisdiction is resolved. In the alternative, Defendants requests that the Court reschedule the October 13, 2005 scheduling conference to avoid the conflict with the religious holiday.

The Court finds that Defendants have not shown sufficient reason for staying the pretrial proceedings. Although Defendants assert that this case is likely to be transferred to another district,

Defendants have not shown that the case is likely to be finally concluded as a result of the Court's ruling on the pending motion to dismiss.¹

IT IS THEREFORE ORDERED THAT the Motion to Amend Initial Order Regarding Planning and Scheduling filed by defendants Edward S. Carroll, D.O., and Kearney Heart and Lung Surgeons, P.C. (doc. 9) is granted in part and denied in part. Defendants' request to stay the case until the Court rules on the pending Motion to Dismiss is DENIED. The Court will, however, GRANT Defendants' alternative request to reschedule the October 13, 2005 scheduling conference.

IT IS FURTHER ORDERED THAT the telephone Scheduling Conference set for October 13, 2005 is hereby continued to **December 8, 2005 at 2:30 p.m.** The deadline for Plaintiff to submit a completed report of the parties' planning conference to the undersigned magistrate judge is hereby extended to **December 1, 2005**. The deadline for the parties to hold their Fed. R. Civ. P. 26(f) meeting is extended to **November 28, 2005**.

IT IS SO ORDERED.

Dated at Kansas City, Kansas on this 3rd day of October 2005.

s/ Gerald L. Rushfelt

¹The general policy in this district is not to stay discovery even though dispositive motions are pending. *Wolf v. United States*, 157 F.R.D. 494, 495 (D. Kan. 1994). However, a court may appropriately stay discovery until a pending motion is decided "where the case is likely to be finally concluded as a result of the ruling thereon; where the facts sought through uncompleted discovery would not affect the resolution of the motion; or where discovery on all issues of the broad complaint would be wasteful and burdensome." *Id.* (citing *Kutilek v. Gannon*, 132 F.R.D. 296, 297-98 (D. Kan. 1990)).

Gerald L. Rushfelt
U. S. MAGISTRATE JUDGE

cc: All counsel